No. 5827

United States

Circuit Court of Appeals

For the Ninth Circuit.

JOE FERRIS, FREDDIE MARINO and FRANK FINNEY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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county, within said Northern Division, knowingly, wilfully and unlawfully transported a number of cases containing whiskey and gin fit for and intended for use for beverage purposes within the United States of America.

2d Count. (Sec. 37, C. C. U. S.) And the said Grand Jurors, upon their said oaths, do further present that the said defendants JOE FERRIS, JAMES SANCHEZ, FRANK WILSON, FRANK FINNEY and FREDDIE MARINO, on or about the 6th day of March, 1929, in Sonoma County, State of California, and near Monte Rio, a place in said County, within said Northern Division, did feloniously conspire to commit the offense heretofore in this indictment charged, and that thereafter, during the existence of that conspiracy and to effect the objects thereof, one or more of said defendants, as hereinafter specifically named, did the following acts within the Northern Division of the Northern [1*] District of California:

(1) That said defendants transported certain intoxicating liquor, to wit: 147 cases of gin and 14 cases of whiskey.

(2) That JAMES SANCHEZ drove and operated an automobile truck bearing California License No. PC–D93–46.

(3) That JOE FERRIS drove and operated an automobile bearing California License No. 7J 31–17, and known as a Nash Sedan.

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*Page-number appearing at the foot of page of original certified Transcript of Record.

(4) That JOE FERRIS, FRANK FINNEY, FREDDIE MARINO, and each of them, did then and there have in their and his possession a weapon commonly known as a forty-five (45), semi-automatic Thompson machine gun of Colts make.

GEO. J. HATFIELD,
United States Attorney.
ALBERT E. SHEETS,
Assistant United States Attorney.

[Endorsed]: A true bill.

C. H. BREUNER,
Foreman Grand Jury.

Filed Mar. 16, 1929. [2]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city of Sacramento, on Monday, the 18th day of March, in the year of our Lord one thousand nine hundred and twenty-nine. Present: the Honorable GEORGE M. BOURQUIN, District Judge, for the District of Montana, designated to hold and holding this Court.

[Title of Cause.]

MINUTES OF COURT—MARCH 18, 1929—ARRAIGNMENT.

The defendants being present this day in court in the custody of the U. S. Marshal, waived arraignment upon the indictment filed herein and to said

made a motion for new trial and a motion in arrest of judgment, which motion was ORDERED denied. Defendants James Sanchez and Frank Wilson having previously plead guilty, were present this day in court for the matter of passing judgment. ORDERED that defendants Joe Ferris, Frank Finney, Freddie Marino, James Sanchez and Frank Wilson each be imprisoned for the period of fifteen (15) months at hard labor in the United States Penitentiary at McNeil Island, State of Washington, and that they pay a joint fine in the sum of three thonsand ($3,000.00) dollars; FURTHER ORDERED that in default of the payment of said joint fine that they be further imprisoned until said joint fine be paid or until they be otherwise discharged in due course of law. ORDERED that bond for appeal as to each defendant be fixed in the sum of $5,000.00. ORDERED that the jury be discharged from further consideration of this case, and that they be excused until Tuesday, March 26th, 1929, at 10 o'clock A. M. [5]

[Title of Court and Cause.]

VERDICT.

We, the Jury, find as to the Defendants at the bar as follows:

JOE FERRIS:	Guilty 1st Count.
	Guilty 2d Count.
FRANK FINNEY:	Guilty 1st Count.
	Guilty 2d Count.

FREDDIE MARINO: Guilty 1st Count.
Guilty 2d Count.
J. W. ROBERTS,
Foreman.

[Endorsed]: Filed 3 o'clock and 35 min. P. M., Mar. 25, 1929. [6]

In the Northern Division of the United States District Court for the Northern District of California.

No. 3679.

Convicted Violation of Transporting Intoxicating Liquor and Conspiracy.

THE UNITED STATES OF AMERICA,

vs.

JOE FERRIS, FRANK FINNEY, FREDDIE MARINO, JAMES SANCHEZ and FRANK WILSON.

JUDGMENT.

Albert E. Sheets, Assistant United States Attorney, and the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the indictment filed on the 16th day of March, 1929, charging them with the crime of transporting intoxicating liquor and conspiracy; of their arraignment and pleas; of their trial and the verdict of the jury on the 25th day of March, 1929, to wit:

"We, the Jury, find as to the Defendants at the bar as follows:

JOE FERRIS:	Guilty 1st Count.
	Guilty 2d Count.
FRANK FINNEY:	Guilty 1st Count.
	Guilty 2d Count.
FREDDIE MARINO:	Guilty 1st Count.
	Guilty 2d Count.

J. W. ROBERTS,
Foreman."

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment: THAT, WHEREAS, the said defendants having been duly convicted in this court of the crime of transporting intoxicating liquor and conspiracy;

IT IS THEREFORE ORDERED AND ADJUDGED that the said defendants Joe Ferris, Frank Finney, Freddie Marino, James Sanchez and Frank Wilson each be imprisoned for the period of fifteen (15) months at hard labor in the United States Penitentiary at McNeil Island, State of Washington, [7] and that they pay a joint fine in the sum of three thousand ($3,000.00) dollars; further ordered that in default of the payment of said joint fine that they be further imprisoned

until said joint fine be paid or until they be otherwise discharged in due course of law.

Judgment entered this 25th day of March, 1929.

WALTER B. MALING,
Clerk.
By F. M. Lampert,
Deputy Clerk. [8]

[Title of Court and Cause.]

MOTION OF DEFENDANTS FOR A NEW TRIAL.

Now come the above-named defendants, Joe Ferris, Frank Finney and Freddie Marino, and move the Court to set aside the verdict herein and to grant a new trial, and as reasons therefor show to the Court the following:

I.

The verdict is contrary to the law of the case.

II.

The verdict is not supported by the evidence in the case.

III.

The Court, upon the trial of the case, admitted incompetent evidence offered by the United States.

IV.

That the Court improperly instructed the jury to the substantial prejudice of said defendants.

ants are sentenced to be imprisoned and *and* to pay fines as set forth in the judgments made and entered by the Court in said cause, and to which judgments reference is hereby made for greater particularity, your petitioners say that they, and each of them, are advised by their counsel and therefore that they aver that there was and is manifest error in the record and proceedings had in said cause, and in the making, rendition and entry of said judgments and sentences, and each of them, to the injury and damage of your petitioners, and each of your petitioners, all of which errors may be fully made to appear by an examination of the assignment of errors filed herein and presented herewith and the bill of exceptions filed herein.

And hereby petition this Honorable Court for an appeal herein to the United States Circuit Court of Appeals in and for the Ninth Circuit, and that a full, true and correct transcript of the record and proceedings in said cause be transmitted by the Clerk of this [12] court to the Clerk of the said United States Circuit Court of Appeals; and that during the pendency of this appeal all proceedings had by this court be suspended, stayed and superseded, and that during the pendency of said appeal the said defendants, and each of them, be admitted to bail in such sum or sums as to this Court seems meet and proper.

Dated, Sacramento, California, March 27, 1929.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants.

Due service of the within petition and receipt of a copy thereof is hereby admitted this 27th day of March, 1929.

ALBERT E. SHEETS,
Attorney for the United States.

[Endorsed]: Filed Mar. 27, 1929. [13]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL, SUPERSEDEAS AND FIXING BOND.

Upon motion of the attorneys of the above-named defendants, Joe Ferris and Freddie Marino and Frank Finney, and it satisfactorily appearing that said defendants have this day filed their, and each of their, notices of appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, from the judgments, and each of said judgments, made and entered in the above-entitled cause against them, and each of them, on March 25, 1929, and said defendants, and each of them, have filed their petition for an appeal, together with their assignment of errors, and will file, within the time required by law, their proposed bill of exceptions,—

upon which they, and each of them, will appeal for the reversal of said judgments, and which said errors, and each of them, are to the great detriment, injury and prejudice of said defendants, and each of them, and in violation of the rights conferred upon them, and each of them, by law; and each of said defendants says that in the record and proceedings in the above-entitled cause, upon the hearing and determination thereof in the Northern Division of the United States District Court for the Northern District of California, there is manifest error in this, to wit: [16]

I.

The Court erred in admitting in evidence certain testimony over the objection of defendants as will more fully appear as follows:

The witness was permitted to describe the actions of two co-defendants at the time of their arrest out of the presence of the defendants on trial over the objection of the defendants on trial, particularly in this:

Mr. SHEETS.—Q. What was their action at that time?

A. Very nervous.

Mr. FAULKNER.—Same objection. The act is the same as the declaration. You cannot bind the co-conspirator,—

Mr. SHEETS.—No, your Honor, that is not correct, there is considerable doubt as to whether or not the conspiracy had terminated yet.

The COURT.—Objection will be overruled.

Mr. FAULKNER.—Exception.

The objection quoted above was supplemented by reference to the prior objection as follows:

Mr. FAULKNER.—Before any reply is given to that we wish to object to any statement made by Sanchez or Wilson out of the presence of the parties here on the ground it is hearsay and the proper foundation has not been laid and any conspiracy, if any existed, has terminated.

To which ruling the defendants then and there duly and regularly excepted.

II.

The Court erred in overruling the motion of the defendants to strike out the testimony of the witness as more fully appears as follows:

The WITNESS.—After being handcuffed together, they had got pretty well forward, they kept edging back toward the rear of the [17] truck, there was about fifteen steps between the car and the place where they had been, they kept watching down the road, the way they had come.

Mr. FAULKNER.—We ask that be stricken out as being an opinion and conclusion of the witness, and not definitely fixing the defendant.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

III.

The Court erred in admitting in evidence cer-

tain testimony over the objection of the defendants in connection with the presence of revenue stamps on the liquor on the truck as follows:

Q. Did they have any United States Government strip stamps on them? A. No.

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

IV.

The Court erred in admitting in evidence Exhibit No. 1, coil of rope, as more fully appears as follows:

Mr. SHEETS.—I ask the coil of rope be marked Government's Exhibit No. 1.

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not as tending to prove any of the issues in this case.

The COURT.—The Government cannot prove its case all at once. It will be admitted. Overruled. [18]

Mr. FAULKNER.—Exception.

(Rope marked Government's Exhibit No. 1.)

To which ruling the defendants then and there duly and regularly excepted.

V.

The Court erred in admitting in evidence certain exhibits over the objection of the defendants as will more fully appear as follows:

Mr. SHEETS.—I ask the gun, ramrod and the case be marked Government's Exhibit 2 and I offer it in evidence.

Mr. FAULKNER.—We object as incompetent, irrelevant and immaterial, and no proper foundation laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Documents marked Government's Exhibit 2.)

To which ruling the defendants then and there duly and regularly excepted.

VI.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. Now at that point where you stopped the automobile and the truck how far is it from the coast of Sonoma County, the Pacific Coast?

Mr. FAULKNER.—We object as incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case.

Mr. SHEETS.—The object is to show that liquor could have been landed at that place.

Mr. FAULKNER.—The only charge is transportation—

The COURT.—It may be a circumstance that would serve—Oh, objection will be overruled.

Mr. FAULKNER.—Exception. [19]

The WITNESS. A. 40 miles.

Q. Within a radius of 40 miles how many places are there along there that the boats could land?

Mr. FAULKNER.—I object to that as incompetent, irrelevant and immaterial, and calls for an opinion and conclusion of the witness, and requires expert testimony.

The COURT.—Objection overruled.

A. How many places?

Mr. SHEETS.—Q. Would you say ten places?

A. Ten or more.

To which ruling the defendants then and there duly and regularly excepted.

VII.

The Court erred in admitting evidence as to the conduct of the co-defendants at the time of their arrest as appears more fully as follows:

Q. What was the conduct of the two defendants when they got out of the car, what did they do?

Mr. FAULKNER.—We make the same objection, the conduct cannot bind the co-defendants charged by their actions.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—They got out of the car and stepped out in the road, I told them to get out, and Deputy Sheriff Shulte put the handcuffs on them and they seemed to try to get away from him, stepped around—

Mr. SHEETS.—Q. What did they do?

A. They stepped around in behind the truck. The car was stopped about 15 or 20 feet back of the truck and they stepped in back of the truck

or the side of the road so he ordered them back duly and regularly excepted. [20]

To which ruling the defendants then and there into the road where we were.

VIII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants with reference to the territory near the place of seizure being adaptable for landing liquor, more fully appears as follows:

Q. Within a radious of forty miles there how many places could a boat land on the coast?

Mr. FAULKNER.—We make the same objection, calling for expert testimony and not within the issues.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

IX.

The Court erred in admitting in evidence certain testimony over the objection of defendants as will more fully appear as follows:

Q. Are you acquainted with the coast along the Sonoma County coast line? A. Yes.

Q. About how many places are there along that coast line where small boats could land?

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not within the issues of this case, and an attempt to make a showing in connection with a violation of

the Tariff law under an indictment charging the prohibition law.

The COURT.—The purpose is to show this liquor might have come in in one of those places and that is one of the circumstances in connection with the plaintiff's case. He may answer it. Overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—Fisherman's Cove, Timber Cove, Stillwater Cove—

Mr. SHEETS.—Q. About how many, I asked you? [21]

A. I would say about ten places marked on the chart and perhaps ten more that have no name.

To which ruling the defendants then and there duly and regularly excepted.

X.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as more fully appears as follows:

Q. Do you observe this rope here, Government's Exhibit 1? A. Yes.

Q. What is a rope similar to that used for by seafaring men?

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and the proper foundation has not been laid, and not within the issues in this case.

The COURT.—Well, I think he may answer it. Overruled.

Mr. FAULKNER.—Exception.

The COURT.—What have you seen such ropes used for along the coast?

A. On my vessel and on a vessel of that size they are used for mooring lines or a tow line.

To which ruling the defendants then and there duly and regularly excepted.

XI.

The Court erred in admitting in evidence Government's Exhibit No. 3 over the objection of the defendants, as more fully appears as follows:

Mr. SHEETS.—I ask that bottle 57146 be offered in evidence as Government's Exhibit 3.

(Bottle received and marked Government's Exhibit 3.)

Mr. FAULKNER.—We object, the proper foundation has not been laid. [22]

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

XII.

The Court erred in admitting in evidence Government's Exhibit No. 4 over the objection of the defendants, as more fully appears as follows:

Mr. SHEETS.—I offer in evidence Government's Exhibit 57147 as Government's Exhibit No. 4.

Mr. FAULKNER.—Same objection.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Bottle received and marked as Government's Exhibit 4.)

To which ruling the defendants then and there duly and regularly excepted.

XIII.

The Court erred in overruling the motion for a directed verdict and opposed by the defendants at the conclusion of the Government's case, which said motion more fully appears as follows:

Mr. FAULKNER.—If the Court please, at this time on behalf of the defendants jointly and severally we move the Court for a directed verdict as to each count of the indictment upon the ground the evidence is insufficient to justify or sustain a verdict as to all or either of the defendants, as to each count in the indictment.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

XIV.

The Court erred in failing to instruct the jury to disregard [23] the statements of the District Attorney in regard to the lack of contradiction in the evidence, as more fully appears as follows:

Mr. FAULKNER.—We ask the Court at this time to instruct the jury to disregard the statement of the district attorney in regard to the lack of contradiction in the evidence as misconduct on his part.

The COURT.—In regard to what?

Mr. FAULKNER.—On the plea of not guilty, that contradicted the charge here and the District Attorney said the evidence produced by the Government was uncontradicted which is, I think, mis-

conduct and I will ask the Court at this time to instruct the jury to di. egard it.

The COURT.—That very question arose in a case that was tried before me sitting in Montana and it came down to the Circuit Court of Appeals and my instruction that it was not misconduct was upheld. The Court will qualify it, in this case, since you have mentioned it, however, by saying uncontradicted saving that presumption of innocence, and you will have it further in the instructions. You can have your exception now. The motion is denied.

Mr. FAULKNER.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

XV.

That the Court erred in failing to give the following instruction tendered by defendants, to which ruling defendants then and there excepted as fully appears in the Bill of Exceptions:

> "In determining the guilt or innocence of these defendants upon the charge of conspiracy alleged in the indictment, I charge you that the burden was upon the government in this case to prove to a moral certainty and beyond a reasonable doubt that the contents of the automobile truck referred to in the evidence in this case was at said time being illegally transported." [24]

XVI.

That the Court erred in instruction the jury with

reference to proof of illegality of possession of liquor transported as follows:

"There is such a thing as lawful transportation of liquor but it is never legal unless those transporting it have a permit from the commissioner of the internal revenue department to do so. There is no evidence in this case that the defendant has a permit but you can, if you see fit, ascertain from the circumstances whether or not this was a lawful transportation. You may look at the character of the locality where it was being transported. There can be no legal transportation of liquor for beverage purposes at any time. A permit is never issued to transport liquor for beverage purposes. You may look at the nature of the liquor. On its face it appears to be foreign liquor, whisky. The whisky is branded "Scotch production," I think, and the gin is branded as Holland production, Dutch production. There is a presumption whenever liquor is found in the possession of anyone that the possession is for unlawful purposes, namely for sale or otherwise unlawfully furnishing it to anyone so in so far as this liquor was found in the possession of those defendants who have plead guilty the presumption is that they had possession unlawfully and so they were likewise transporting it unlawfully.

If from all the circumstances in the case you arrive at a conclusion the liquor was being unlawfully transported then it is for you to say

whether these defendants had any part in that act.

To the giving of which instructions these defendants then and there excepted.

XVII.

That the Court erred in denying defendants' motion for a new trial to which ruling defendants excepted and which motion is fully set out in Bill of Exceptions herein.

WHEREFORE, for the many manifest errors committed by the Court, the defendants through their attorneys pray that said sentences and the judgments of conviction be reversed; and for such other and further relief as to the Court may seem meet and proper.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants.

Service and receipts of copy admitted this 27th day of March, 1929. [25]

GEO. J. HATFIELD,
U. S. Attorney.
ALBERT E. SHEETS,
Asst. U. S. Atty.

[Endorsed]: Filed Mar. 27, 1929. [26]

[Title of Court and Cause.]

BILL OF EXCEPTIONS, ON BEHALF OF THE DEFENDANTS JOE FERRIS AND FREDDIE MARINO.

BE IT REMEMBERED, that heretofore, to wit, on March 16, 1929, the Grand Jury of the United States, in and for the Northern District of California, Northern Division, did present and return into and before the above-entitled court its indictment against the above-named defendants; that on said day said indictment was filed in said court and thereafter each of said defendants was duly arraigned, as shown by the record on file in the above-entitled cause.

AND BE IT FURTHER REMEMBERED, that said defendants Joe Ferris and Freddie Marino, and Frank Finney, pleaded not guilty to said indictment on March 18, 1929, and the cause being at issue, the same came on regularly for trial before Honorable George M. Bourquin, United States District Judge, on March 25, 1929, and a jury was duly empaneled and sworn to try the cause, the United States being represented by George E. Hatfield, Esq., United States Attorney, and Albert E. Sheets, Esq., Assistant United States Attorney, and the defendants above named being personally present and represented by their counsel, James B. O'Connor, Esq., Harold C. Faulkner, Esq., and T. A. Farrell, Esq.

(Testimony of William A. Shulte.)

After said jury was duly empaneled and sworn as aforesaid, the Assistant United States Attorney, A. E. Sheets, Esq., made a spoken statement to the jury as to the matter the plaintiff expected to [27] prove.

Thereafter the following proceedings were had:

TESTIMONY OF WILLIAM A. SHULTE, FOR THE GOVERNMENT.

WILLIAM A. SHULTE, produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination by Mr. SHEETS.

I am a deputy sheriff of Sonoma County and on the 6th day of March, 1929, at 8:30 o'clock in the morning had occasion to stop a truck containing whiskey and gin on a road out from Monte Rio a short way.

A. We were stopped at the Russian River Bridge at Monte Rio around 8:30 in the morning and a G. M. C. truck, about two and a half tons, came across the bridge into Monte Rio and right at the end of the bridge the road was very rough and it crossed the road, and we could hear bottles rattling in the closed part. It was covered with canvas. The sheriff says to me, "That must be it, Bill." I says, "Yes, let's get it." The truck was moving at a pretty good rate of speed and we overtook it. I should say, we run to pick them up about 45 or 46 miles an hour and when we picked—

(Testimony of William A. Shulte.)

The COURT.—Well, get to it quickly and give the speed.

A. We stopped the truck about a mile and a half out of Monte Rio. We came up alongside it and as we pulled up alongside the sheriff blew his siren and then dropped back of the truck and stopped and we stood alongside the truck and ordered the two men out, one getting out on each side. The sheriff asked them what they had in the truck—

Mr. FAULKNER.—Before any reply is given to that we wish to object to any statements made by Sanchez or Wilson out of the presence of the parties here on the ground it is hearsay and the proper foundation has not been laid and any conspiracy, if any existed, has [28] terminated.

The COURT.—Yes, nothing in relation to these other defendants, if they said anything, you don't assume they did, as a matter of fact you don't assume they said anything about the other defendants?

Mr. SHEETS.—No, your Honor.

The COURT.—Come briefly to it. There is no dispute there on the fact the truck was there. Proceed.

The WITNESS.—We handcuffed them together and in a matter of two minutes—

Mr. SHEETS.—Q. What was their action at that time?

A. Very nervous.

Mr. FAULKNER.—Same objection. The act is

(Testimony of William A. Shulte.)

the same as the declaration. You cannot bind the co-conspirator,—

Mr. SHEETS.—No, your Honor, that is not correct, there is considerable doubt as to whether or not the conspiracy had terminated yet.

The COURT.—Objection will be overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—(Continuing.) After being handcuffed together, they had got pretty well forward, they kept edging back toward the rear of the truck, there was about fifteen steps between the car and the place where they had been, they kept watching down th road, they way they had come.

Mr. FAULKNER.—We ask that be stricken out as being an opinion and conclusion of the witness, and not definitely fixing the defendant.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

The WITNESS.—(Continuing.) They edged around the back of the truck. I ordered them back a couple of times and about the time they got back I looked down the road. They got back clear to the [29] right-hand corner of the truck, then I ordered them back again, that is right to the left rear corner of the truck, by the road alongside of the truck. Then I got behind them and I looked down the road myself and I seen this car coming and the men looked very tired and rough looking and I said, "For Christ's sake, Doug, here comes the rest of the gang." At that moment I was standing right behind the prisoners who were be-

(Testimony of William A. Shulte.)

tween me and the coming automobile. The sheriff was standing along the road by the side of the truck, the left side of the truck to my right. The prisoners would be in line between him and the automobile. We were pretty well lined up the road. As the car came up I pulled my gun and the sheriff walked out and waived the car down. The car stopped in the middle of the road at the command of the sheriff. I kept the car covered all the time as it passed me with my gun and the sheriff ordered Williams, the driver of the car, out of the car, and he got out on the left-hand side and I was standing just with the two men then in the middle of the road and as he got out the left-hand side I hollered to him, I said, "You better get the other man out," and he walked around the front of the truck with Williams and got the other man by the name of Mays out of the truck. Mays is Marino. Mays is the name he gave us there and later he gave the name of Freddie Marino. The driver gave the name of Williams to our office and later gave the name of Joe Ferris. They are the two defendants, Marino and Ferris, here charged, the two on my left looking down. After he walked around the right-hand side and opened the door Mays got out and he searched Mays and asked him if he had a gun and he said, "No." Williams said, "I have a gun sheriff, and I will get it for you." The sheriff says, "No, keep your hands out of your pocket, I will get it." And he took the gun, put his hand in his pocket and took out a gun, a 38 Colts.

(Testimony of William A. Shulte.)

Yes, *polic* positive, loaded. The sheriff took the gun out of his pocket and handcuffed them two men together and [30] says to me.—I then walked around the car to the left-side and he says: "Bill, get that rifle." I reached in and pulled it out, muzzle to me and the gun was laying that way, and pulled it out, and I seen it was a Thompson machine gun and said to Doug, "Christ sakes, Doug, it is a machine gun."

The COURT.—Don't be too literal, Witness.

The WITNESS.—We looked around and he says, "What have you got that thing with you for?" Williams said, "Well, we haven't got that for you, Sheriff, we have got that for high-jackers." Mays spoke up a little later and says, "We have been hunting," and stated that he had taken the machine gun to hunt quail. He said it seriously, no smiles. The sheriff looked in the rear seat and seen Finney, the man sitting on my right at the table, laying in the back of the front seat, and was asleep or pretended to be, and he ordered him out and he started to get out the right side and he said, "Get out this side." He got out and as he got out he says, "Well, I am not going to stay here, you have got nothing on me, I am going to get out of here," and started down a little road that was opposite the car, on the right-hand side of the car. I ordered him back. He had gone about 25 or 30 feet, and he came back and stood there a few minutes and then says, "I am going home," and started down the road and right there we give him plain language to stop or he

(Testimony of William A. Shulte.)

would be brought back right. He tried to get away twice. We found 151 cases of gin and 19 sacks of Scotch whiskey in the truck.

Q. Did they have any United States Government strip stamps on them? A. No.

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

WITNESS.—It was similar to this whiskey bottle and gin bottle. [31] There were some other different kinds of Scotch whiskey and gin in there. I delivered some of it to a federal prohibition agent, Mr. Goodman. I found a big coil of rope in the automobile. The rope you show me is the same coil of rope.

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case.

The COURT.—The Government cannot prove its case all at once. It will be admitted. Overruled.

Mr. FAULKNER.—Exception.

(Rope marked Government's Exhibit No. 1.)

WITNESS.—The truck was painted green. There is green on this rope, on one end of it, exactly the same as the paint on the truck

That case you show me was in the rear of the automobile. This (displaying a gun), was in that case.

(Testimony of William A. Shulte.)

The COURT.—Just a moment. Do we understand that gun was in the case when he took it out of the automobile?

The WITNESS.—The gun was in the front seat laying right on the floor-board.

The COURT.—That is the gun you pulled out muzzle to you?

A. Yes.

The COURT.—You are fortunate to be here.

The WITNESS.—The ram rod was in the case. There was 20 shells in the clip. The clip that was in the gun at the time shot 20 shots.

Mr. SHEETS.—I ask the gun, ram rod and the case be marked Government's Exhibit 2 and I offer it in evidence.

Mr. FAULKNER.—We object as incompetent, irrelevant and immaterial, and no proper foundation laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Documents marked Government's Exhibit 2.) [32]

The WITNESS.—This pistol you show me is a Colts 38 positive taken from Williams by Sheriff Bills. Mays was in the car with the gun right at his feet. The gun was in the same condition as it is now. The gun fires with or without the shot. At that time the stock was on it.

Q. Now at that point where you stopped the automobile and the truck how far is it from the coast of Sonoma County, the Pacific Coast?

(Testimony of William A. Shulte.)

Mr. FAULKNER.—We object as incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case.

Mr. SHEETS.—The object is to show that liquor could have been landed at that place.

Mr. FAULKNER.—The only charge is transportation—

The COURT.—It may be a circumstance that would serve—Oh, objection will be overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—A. 40 miles.

Q. Within a radius of 40 miles how many places are there along there that the boats could land?

Mr. FAULKNER.—I object to that as incompetent, irrelevant and immaterial, and calls for an opinion and conclusion of the witness, and requires expert testimony.

The COURT.—Objection overruled.

A. How many places?

Mr. SHEETS.—Q. Would you say ten places?

A. Ten or more. There was some sand in the rear part of the automobile.

Cross-examination by Mr. FAULKNER.

Other than the rope, gun and sand there was in the automobile, a roll of blankets, a bed for one man, and also some steaks and some provisions. I should say two or three meals. There was some canned goods. I never counted them, four or five. There were no boxes [33] that I saw.

The time between the presence of the two de-

(Testimony of William A. Shulte.)

fendants on trial and the overtaking of the truck, was two or three minutes, no more. The truck was a mile or a mile and a half from Monte Rio. With reference to the entrance to Bohemian Grove it was north of a place called Tyrone. In connection with it being south of the entrance to Bohemian Grove, you don't go near the entrance to Bohemian Grove, going toward Duncan's Mills. The road does not follow the river. After leaving Monte Rio it goes in a southeasterly direction on the easterly side of the river.

After we saw the truck in Monte Rio it took us four or five minutes to overtake the truck. When we overtook the truck we were going around 46 miles an hour and having in mind the speed of our car, I would approximate the speed of the truck when we first observed it as going very slow. When we overtook the truck I would say the truck was traveling 38 miles an hour.

The sheriff drove his car up alongside where he could see the two men at the cab of the truck, blew the siren and dropped back to the rear when the truck came to a standstill. We were about 15 feet to the rear. I first got out to the right-hand side as he was driving and he got out right afterwards. I then walked up to the truck and had some conversation with the men in it. They then stepped down. They were ordered down, one from each side. The men were then handcuffed together. Before handcuffiing them we searched them. In the meantime the sheriff's car was standing right

(Testimony of William A. Shulte.)

where it always stood. During the entire period of time I have testified to the sheriff's car was always at the back of the truck. It is not a fact that after the men had been handcuffed the sheriff got in his own car in front of the truck. It remained in the same position until we left to go to Santa Rosa.

No other machine or truck passed while we were there before the [34] defendants came. A sedan automobile did not pass. No cars or trucks or any kind passed between the time the Nash came up and the time we stopped the other truck. No automobile went either way.

I searched the driving cab of the truck. That was after the defendants on trial made an appearance, when I got in to drive the truck to Santa Rosa. I drove it to Santa Rosa. I did not make any notations of the time at the time that the arrests were made, nor no notations in connection with the arrest of the defendants. At the time Williams made the statement in connection with the gun, by Williams is meant Ferris, the persons present were Ferris, Marino, the sheriff and myself and the two boys on the truck and Finney was supposed to be asleep on the back seat of the sedan. The statement was made to the sheriff in my presence in response to a question. The sheriff asked him what he had this gun for. He asked that question of Williams. As to whether Mays had the gun, it was in the front seat on the floor.

Q. When the sheriff arrested Williams or Ferris

(Testimony of William A. Shulte.)

he stepped up and the sheriff asked him if he had a gun?

A. At that time, that was the beginning of the search.

Q. Then you searched Mays, isn't that correct?

A. Yes.

Q. When was the gun first seen by either you or the sheriff?

The COURT.—Which gun, you have two guns here.

Mr. FAULKNER.—That is the rifle.

The WITNESS.— ——

Mr. FAULKNER.—Yes.

The WITNESS.—The first time I seen the gun was when the sheriff told me to take that rifle out from under the front seat, in front of the front seat. That was after the defendants here on trial were handcuffed. I was on the right-hand side at the rear of the automobile, on the right-hand side when Marino got out of the car. I did not notice the rifle at that time. I was back too far. I [35] handcuffed Marino and Ferris and the discussion in regard to the rifle was right after that. We had not started to Santa Rosa at that time.

Q. How long did it take you to get under way, the truck and all five of the men you have arrested?

A. Well, to get under way, we had that sedan there and Williams says, "Sheriff, I will drive you in in my car."

I believe Williams was handcuffed at that time. That was after the discussion in regard to the ma-

(Testimony of William A. Shulte.)

chine gun. The sheriff says: "Oh, no you won't, you will go in my car."

It is not a fact that the arrangement in regard to Mr. Ferris driving the car back to Santa Rosa occurred before the machine gun was seen and that is the reason the sheriff did not permit him to drive the car back. The sheriff would not have permitted him to drive the car back whether it was or not. I don't remember the exact time when that was said but he would never have permitted that.

It is not a fact that at the time of the arrest of Mr. Ferris and Mr. Marino, Mr. Ferris was to drive the sheriff back in his car and then the rifle was discovered.

Mr. FAULKNER.—Q. Isn't it a fact, Mr. Shulte, that Mr. Ferris, the man you call Williams, said that that rifle was not for the officers?

A. It is a fact. He says, "That is not for you, Sheriff, that is for high-jackers."

I am sure he said that and I am sure of the time he said it. I believe he was handcuffed. I would say yes.

The other defendants at the time this was going on were brought up with me to the sedan, they came to the sedan with me as I came up. They were handcuffed at that time. The defendant I mentioned trying to run away was Finney. He never was handcuffed.

Q. You did not take very seriously his effort to get away? [36]

(Testimony of William A. Shulte.)

A. We just happened to run out of handcuffs, that was the point.

Q. Now, then, was there any question at any time by Mr. Ferris or Mr. Marino concerning their acquaintanceship with the man on the truck?

A. At that time?

Q. Yes. A. No, I don't believe there was.

Q. Did that occur to you to ask them if they knew the men on the truck?

A. We felt pretty sure they did know them.

Mr. FAULKNER.—I ask that be stricken out.

The COURT.—Yes, read the question.

(Question read.)

A. Why no, it never occurred to us.

There were no questions asked by the sheriff in my presence of any of the three defendants on trial in connection with whether they knew any of the men on the truck. The question was asked in my presence at the sheriff's office, in the private office of the sheriff, of Mr. Finney. The district attorney of *the* Sonoma County, the sheriff and myself were present.

Q. At any time did you advise the defendants—When was the first time you advised the defendant Marino, Ferris, or Finney, that they were under arrest? A. When were they advised?

Q. Yes.

A. There was no warrant sworn to at that time, no.

Q. Did you ever advise them that they were under arrest?

(Testimony of William A. Shulte.)

A. Yes, they seen the warrant at the time the warrant was sworn to and they were taken over and arraigned, and they were then advised.

Q. At any time after you took the physical custody of these defendants at the place that you stopped that truck did you ever advise [37] any of them that any statement they would make might be used against them? A. No.

I did not ever advise any of the three *dividends* that they were being arraigned in connection with the violation of any law in connection with intoxieating liquor. I have not the least idea where the truck is that is painted similar to the rope. It is not in the custody of the sheriff of Sonoma County.

Redirect Examination by Mr. SHEETS.

I turned it over to the prohibition department. Four of the men had on black jeans, black overalls. The fifth one was Wilson. He had on a pair of, I think Khaki pants or whipcord pants and high shoes. We found an extra pair of black jeans where he had been riding, similar to the ones the other men were wearing. The condition of the extra pair of pants was wet and sandy.

Recross-examination by Mr. FAULKNER.

We examined the clothing of the three defendants on trial while searching them at the county jail at Santa Rosa. I did not say there was any evidence of dampness on their clothing. In connection with the provisions in that car, and whether

(Testimony of William A. Shulte.)

there were three boxes of provisions and a mattress. I know there was a mattress in the car. I would not say three boxes of provisions. I am kind of faint on how much provisions were in the car, I would not say. There was not a great deal. (R., pp. 5–20.)

TESTIMONY OF E. D. BILLS, FOR THE GOVERNMENT.

E. D. BILLS, produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination by Mr. SHEETS.

I am a sheriff of Sonoma County and about 8:30 on the morning of March 6th I had occasion to seize a truck containing 151 cases of gin and Scotch whiskey near Monte Rio. I should say a mile and a half or two miles out of Monte [38] Rio. Deputy Sheriff Shulte and myself were in Monte Rio on the morning of March 6th. We were sitting in a machine talking to a man there.

The COURT.—Now, get to the truck, we don't care what conversation you had with anybody in Monte Rio.

WITNESS.—We saw the truck pass by and cross over a little bridge near us and heard bottles rattling in it and figured it out and about a mile or mile and a half, something of that sort, we overtook it and pulled up alongside of it and I gave them

(Testimony of E. D. Bills.)

the siren and slowed down, they slowed down and I pulled in behind them to the side of the road and stopped and got out of the truck, or out of the machine and went up to the truck. The deputy sheriff and myself both went up to the truck and I said to them, "What have you fellows got here."

We ordered them out of the truck and they got out in the road. There was liquor in the truck covered by a canvas. About 151 cases I think of whiskey and several cases of gin, similar to these two bottles you have in your hand. I turned them over to the prohibition agent named Goodman.

Q. What was the conduct of the two defendants when they got out of the car, what did they do?

Mr. FAULKNER.—We make the same objection, the conduct cannot bind the co-defendants charged by their actions.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—They got out of the car and stepped out in the road, I told them to get out, and deputy sheriff Shulte put the handcuffs on them and they seemed to try to get away from him, stepped aroun*t*—

Mr. SHEETS.—Q. What did they do?

A. They stepped around in behind the truck. The car was [39] stopped about 15 or 20 feet back of the truck and they stepped in back of the truck or the side of the road so he ordered them back into the road where we were.

(Testimony of E. D. Bills.)

Then I was looking at the truck and went to the front end of the truck to see if I could find an identification certificate in it. I looked up the road. The time that elapsed between the time I stopped them and the time I looked up the road along the way they had come was perhaps two minutes, a couple of minutes. I saw a closed car coming. A sedan automobile. It looked to be a Nash, I think they call it a Nash 400. It is a big Nash. Shulte and the two men were near the rear end of the truck. I was near the front end. They were all in the road. The two prisoners were ahead of me and Shulte at the time the car was sighted so they were between me and the car. As the car pulled up to us Shulte pulled his gun and I think he motioned to them to stop, I am not sure. He covered them with his gun.

I motioned to the car to stop myself, stepped out in the road and they slowed down and I ordered them over to the side of the road ahead of the truck and we all went up to the front end of the car and the driver of the Nash car opened the door and looked out and he ordered them out of the car, told them to get out into the road. We got him out and went around the front end of the car and got the other man out.

The driver gave his name as Frank Williams. His name is Joe Ferris. I see him at the table here. The other man gave his name as Jack Mays. His name is Fredie Marino. With respect to what I did to Mays when he got

(Testimony of E. D. Bills.)

All these men had on dark colored clothes. I think their pants were sort of black jeans, I think they call them. All were the same kind but one. There was one man who had, a man named Wilson on the truck, had on a pair of high-topped lace shoes and I think khaki pants. There was a pair of black jeans found in the truck where Wilson was riding.

I saw this rope, Government Exhibit 1, in the car between the front and back seat. The truck was painted I think a dark blue. I think it was a dark color at least. I mean the truck was green. I thought you meant the sedan.

Q. How far is the point where you arrested these men from the coast?

A. An air line would probably be six or eight miles.

Q. Within a radius of forty miles there how many places could a boat land on the coast?

Mr. FAULKNER.—We make the same objection, calling for expert testimony and not within the issues.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

The WITNESS.—There are several, I don't know how many there would be, but a number of places, I think. I know of one other place where I have seen liquor that has been landed. [42]

This automobile was coming from that general direction. I put these three defendants in my automobile and started to town. Well, Ferris repeated

(Testimony of E. D. Bills.)

again they did not have the gun for officers, that they had it for hi-jackers, and he wanted to call up somebody in San Francisco. He wanted to know if I would let him call up somebody. I said, "This is no time now to talk about it, you cannot call up anybody now, wait until you get in to Santa Rosa. You can do it then." He also made a remark about knowing some people in Sonoma County they thought were friends of mine and wanted to know if there was not some way of fixing it up. He also said, "I thought the officers in this county were all right to come through here." I said, "Where did you get any idea of that kind?" I said, "You come through here in broad daylight and right under a man's nose and do you expect him to stand for that?" The machine gun was loaded.

Mr. SHEETS.—That is all.

Cross-examination by Mr. FAULKNER.

I think the conversation was between Mr. Ferris and myself.

Q. Are you sure of that?

A. Yes, there was conversation between me and Mr. Ferris.

The conversation I just related in connection with fixing this up and referring to mutual friends of himself and myself was, I think, with Mr. Ferris. The reason I say think was because he seemed to be doing most of the talking. Conversation was had by me with Mr. Ferris. He was sitting in the back

(Testimony of E. D. Bills.)

seat. Finney was sitting in the front seat. I did not fix it up with him.

In this conversation between myself and the defendants on the way in I intended at that time to charge them with the illegal possession of fire arms. That is the only offense I ever charged them with. I think the three of them were charged with the possession of a machine gun. Ferris was also charged with having in his possession a concealed weapon. That is the only charge I have ever placed against these three defendants in Sonoma County. The number [43] of times reference was made to hi-jackers by the defendants was probably twice. The occasion of referring to it the second time was in the course of conversation as I have already stated. As to whether I asked the questions, I don't remember exactly. I think perhaps it is a fact that the first question I asked defendant Ferris was "Have you anything to do with these men on the truck?" When I first apprehended him his answer if I asked him that question was that he did not know them. During the entire time he was in my custody I probably asked him the same question on several different occasions and of course he denied he knew them. I did not believe him.

Q. Why didn't you charge him with the transportation of liquor in Sonoma County?

WITNESS.—We simply placed a charge against the men who had the liquor in their possession at that time.

(Testimony of E. D. Bills.)

We placed the charge against the men who had the liquor in their possession at the time and placed the charge in connection with fire arms against these defendants on trial.

I testified that during the ride in, Mr. Ferris asked if he could use a telephone.

Q. And you told him he could use a telephone in Santa Rosa. When was the first time you permitted Mr. Ferris to use a telephone in connection with the date of this arrest?

A. I cannot answer that question because I don't know. He was placed in the jail and I don't know what time the jailer allowed him to telephone.

It is a fact that he was placed in jail on the morning of March 6.

Q. And on the afternoon of that day he was brought to your office and demanded the advice of counsel which was refused by you?

A. We started to ask him a few questions in *with* the district attorney and myself and he said he did not want to talk about it [44] unless he had his attorney.

Q. That was refused? A. No.

Q. Was it permitted? Did you permit him to use the telephone to get an attorney?

A. Not at that time because we were so busy we could not be bothered with it.

I think the following day he was brought before the Justice of the Peace on the gun charge. I was present at that time. I can't say whether it was a fact, I think probably it was a fact, that a request

(Testimony of E. D. Bills.)

was made again by these defendans to have the advice of counsel of the Justice of the Peace and the Justice of the Peace replied that it was up to me. They were then later taken before a United States Commissioner.

Q. Isn't it fact that after these men were arrested on the morning of March 6th they were never permitted to interview a lawyer until they had been brought before a Justice of the Peace and charges had been placed against them and after they had been held to answer without a hearing before a United States Commissioner? A. I think—

Mr. SHEETS.—That is not the fact, they were not held to answer without a hearing.

Mr. FAULKNER.—There never was a hearing.

Mr. SHEETS.—There has not been a hearing yet as they were not held to answer.

Mr. FAULKNER.—They were held to answer by the United States Commissioner, they were brought out of their cells and said, "You are held to answer" and no testimony taken.

The COURT.—Well, never mind, dismiss all that argument, we are here to hear the facts. No evidence before the Court they were held to answer without a hearing.

I was present in the building in which the jail is contained [45] with the United States Commissioner. I was there on the 8th.

The COURT.—The point you are trying to make is, it was set without a lawyer.

Mr. FAULKNER.—Yes.

(Testimony of E. D. Bills.)

I don't know exactly how long it was after these men were arrested that they got a lawyer. It sees to me it was the following afternoon. I don't know it was on the night of the 7th at ten o'clock.

In connection with the contents of the car in addition to the gun and rope I think there was some kind of covering. I don't know whether clothes or overcoats, something of that kind, and there appeared to be a paper carton with some provisions of some sort. I don't know the amount of cartons there may have been more than one. I saw one. That was all. I was looking for the gun. There was a box of provisions in the car. I should judge a foot or 15 inches square and they had a few articles of provisions in there. I did not see any other provisions. I did not know there were eighteen steaks that were afterwards used by the jailer in Santa Rosa. I did not know until this morning when I heard that in a conversation out in the corridor.

Q. Well, your search for guns was vigilant?

A. I was pretty busy at that time, I had five men standing there in the road. I had taken a gun off one of them and was looking for other guns.

In connection with the conversations on the way in, in which I was present with the three defendants on trial, Mays may have said something I am not sure about it. I think perhaps he did. In connection with the mutual friends, I don't think there was anybody's name mentioned in connection with it, that is around my neighborhood that

(Testimony of E. D. Bills.)

I know of. I don't think he mentioned anybody's name there. [46]

In connection with the details of the conversation relative to not pressing the case, there was not much detail to it. He just said, "Isn't there some way to fix this up?" It is a fact in connection with that conversation when I brought these men in to Santa Rosa on the afternoon of the day of the arrest they were each brought separately before the district attorney. I should say it took about two minutes after we had stopped the truck until the arrival of the defendants on trial. I don't mean to say from the time we first saw them.

We first saw the truck at Monte Rio crossing the bridge and immediately started to overtake the truck. The truck when I first saw it was from here to the end of the courtroom, probably about 50 feet, possibly a little further. I was in my own automobile. I think the engine was goin*d* in my automobile. I am mistaken in my statement that it was not. I think the engine was going. When I first observed the truck it was not going very fast at that time. It had simply come off the bridge across the Russian River at Monte Rio and had a little turn to make to go into the other bridge. There are two bridges there.

Q. And at the time it was about 50 feet from you and you were in your automobile with the engine going and you overtook the truck loaded as it was about a mile and a half or two miles from Monte Rio.? A. I think not any further than that.

(Testimony of E. D. Bills.)

The first thing I did after overtaking the truck was sound my siren. When the truck came to a complete standstill I fell in back of it and got out of my car and walked up to the truck driver. I summoned them to step down and asked them what they had in their truck and did not receive any reply. I did not examine the truck at that time. I did not examine the driver's seat until after we got them out. I examined the cab of the car by looking up in there. I did not examine the contents of the truck. I did not examine the [47] contents of the truck until after I got it into Santa Rosa. I went up to the front end of the truck. I don't know whether I stopped right in front of it. Perhaps I did. I was looking for an identification slip to the truck. I did not say I searched it thoroughly because we were busy there and I wouldn't say a thorough search. Then I came back to the two defendants I had arrested and put the handcuffs on them. They were at that time standing in the road. I think at that time they were standing at the side of the truck, not either in front or back. I am not positive on that. I do not think the defendants Sanchez and Wilson were at any time in front of the truck.

After we had decided what we were going to do about bringing them in they may have gone further northward or to the rear of my automobile. At that time they had not been to the rear of my automobile. We finally decided that Shulte bring Sanchez

(Testimony of E. D. Bills.)

and Wilson in and I would bring the other defendants that are now here in. We may have decided what we would do with those two men when we first had them, not seeing the others. I don't remember what we decided to do.

Q. You know, as a matter of fact, Sheriff, that before these three men came on the scene at all you had already decided to have the truck driven in by one of the men on it?

A. No, that was after the other three men were there.

Q. After the other men came you decided to have your deputy drive it in?

A. No. First I said to Shulte, "Loosen the handcuffs on one of these men and let him drive the truck in, and you ride alongside of him."

Q. Isn't it a fact that long before Ferris and the other defendants came on the scene immediately upon placing the handcuffs on the defendant Sanchez he asked to have those handcuffs loosened?

A. Probably he asked that, anybody who ever has them put on [48] asks that question.

A. And they had to be loosened, didn't they?

The COURT.—What is all this detail for?

Mr. FAULKNER.—The element of time, he could not have done it all in two minutes.

The COURT.—Oh, that does not advise the jury for anybody to say how long this took to happen when he says he does not know. Proceed. Anything further? Any redirect?

Mr. SHEETS.—No.

(Testimony of H. O. Neilsen.)

The WITNESS.—As to whether the rifle is a machine gun, it is what we know as a machine gun. That is what it is supposed to be. Thompson gun it is called.

The COURT.—It shows for itself what it is. Call your next witness. (R., pp. 21–37.) [49]

TESTIMONY OF H. O. NEILSEN, FOR THE GOVERNMENT.

H. O. NEILSEN, produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination, Questions by Mr. SHEETS.

I am a boatswain in the Coast Guard Service. I am acquainted with the coast along the Sonoma County coast line.

Q. About how many places are there along that coast line where small boats could land?

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and not within the issues of this case, and an attempt to make a showing in connection with a violation of the Tariff law under an indictment charging the prohibition law.

The COURT.—The purpose is to show this liquor might have come in in one of those places and that is one of the circumstances in connection with the plaintiff's case. He may answer it. Overruled.

Mr. FAULKNER.—Exception.

(Testimony of H. O. Neilsen.)

The WITNESS.—Fisherman's Cove, Timber Cove, Stillwater Cove—

Mr. SHEETS.—Q. About how many, I asked you?

A. I would say about ten places marked on the chart and perhaps ten more that have no name.

Q. Do you observe this rope here, Government's Exhibit 1? A. Yes.

Q. What is a rope similar to that used for by seafaring men?

Mr. FAULKNER.—We object to that as incompetent, irrelevant and immaterial, and the proper foundation has not been laid, and not within the issues in this case.

The COURT.—Well, I think he may answer it. Overruled.

Mr. FAULKNER.—Exception.

The COURT.—What have you seen such ropes used for along the coast?

A. On my vessel and on a vessel of that size they are used for mooring lines or a tow-line. [50]

Cross-examination.

(Questions by Mr. FAULKNER.) Q. That rope can be used for anything, can't it?

A. I merely speak of my experience. I presume you can use that rope to tow a truck, as it is an automobile, I am not in the towing business but if I was towing an automobile I would not drag that line along to use on an automobile.

(Testimony of H. O. Neilsen.)

Q. It would be an ideal rope for an automobile that was mired in the mud, wouldn't it; did you ever get an automobile out of the mud? A. Yes.

Q. You would not mind having that rope to do it?

A. I would not want that kind, would not be bothered with it because a rope one-half or one-third the size would pull the car out.

Q. Yes, but you do not use the line to tow the car out do you—

The COURT.—Don't argue with him.

I am familiar with the coast line up and down the coast line of Sonoma County; I am not familiar with the highways nor the resorts nor the density of population except as I have seen from the sea. I do not know these various places I used for running liquor. I said they could, but by that I mean I would do so if I wanted to land anything. The sized boat I would use would be a dory. These are the places where I could come in with a small-sized boat.

Q. Will you describe the size of a dory to the jury? A. That depends on weather conditions.

Q. Well, the dory—

A. It would depend on weather conditions.

The COURT.—You are asked to describe a dory; now do it.

A. A dory is a small boat ranging from 14 feet to 25 with a flat bottom, and has three or four seats in it. It is made out of wood.

(Testimony of T. W. Goodman.)

In response to a question by Mr. Sheets the witness declared that the rope was approximately 90 feet long. [51] (R., pp. 37–29.)

TESTIMONY OF T. W. GOODMAN, FOR THE GOVERNMENT.

T. W. GOODMAN, produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination.

(Questions by Mr. SHEETS.)

I recognize the gin bottle marked "57147." I got it at the sheriff's office at Santa Rosa, from Sheriff Bills. I delivered it to Chemist Love. It was in my possession all the time. The bottle "57146," Scotch Whisky, I got at the Santa Rosa county jail from Sheriff Bills, and I delivered it to Chemist Love. (R., p. 39.)

TESTIMONY OF R. F. LOVE, FOR THE GOVERNMENT.

R. F. LOVE, produces as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

I received the bottle marked "57146" from Agent Goodman. I examined the contents which chemically speaking, is whisky fit for beverage purposes. There were no strip stamps or Government stamp. No Government stamp on it at all.

I received from Agent Goodman this bottle marked "57147," and examined its contents which is gin. They are both intoxicating liquors fit for beverage purposes.

Mr. SHEETS.—I ask that bottle 57146 be offered in evidence as Government's Exhibit 3.

(Bottle received and marked Government's Exhibit 3.)

Mr. FAULKNER.—We object, the proper foundation has not been laid.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. SHEETS.—I offer in evidence Government's Exhibit 57147 as Government's Exhibit No. 4. [52]

Mr. FAULKNER.—Same objection.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Bottle received and marked as Government's Exhibit 4.)

Mr. SHEETS.—At this time I wish to offer in evidence the revolver concerning which the witness testified as Government's Exhibit 5.

(Revolver marked Government's Exhibit 5.)

Mr. SHEETS.—The machine gun, ramrod and musical instrument case as Government's Exhibit 6.

The CLERK.—That is already Government's Exhibit 2 in evidence.

The COURT.—Next witness.

Mr. SHEETS.—That is the Government's case.

The COURT.—Gentlemen of the Jury, we will take a recess until 2 P. M.

(Whereupon the usual statutory admonition was given and a recess declared until 2 P. M.)

AFTERNOON SESSION—2 o'clock P. M.

The COURT.—Proceed, Gentlemen.

Mr. FAULKNER.—If the Court please, at this time on behalf of the defendants jointly and severally we move the Court for a directed verdict as to each count of the indictment upon the ground the evidence is insufficient to justify or sustain a verdict as to all or either of the defendants, as to each count in the indictment. At this point counsel for defendants agreed with the Court the motion for directed verdict and a discussion between court and counsel.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

The COURT.—You may proceed with the defense.

Mr. FAULKNER.—Defendants rest.

The COURT.—You may proceed with the argument.

(Whereupon the cause was argued by respective counsel.) [53]

Mr. FAULKNER.—We ask the Court at this time to instruct the jury to disregard the statement of the district attorney in regard to the lack of contradiction in the evidence as misconduct on his part.

The COURT.—In regard to what?

Mr. FAULKNER.—On the plea of not guilty, that contradicted the charge here and the district attorney said the evidence produced by the Government was uncontradicted which is, I think, misconduct and I will ask the Court at this time to instruct the jury to disregard it.

The COURT.—That very question arose in a case that was tried before me sitting in Montana and it came down to the Circuit Court of Appeals and my instruction that it was not misconduct was upheld. The Court will qualify it, in this case, since you have mentioned it, however, by saying uncontradicted saving that presumption of innocence, and you will have it further in the instructions. You can have your exception now. The motion is denied.

CHARGE TO THE JURY.

The COURT.—(Orally.) Gentlemen of the Jury, you have heard the evidence and the argument and now it is for the Court to deliver to you the instructions or charge which, as you know, is mainly to make you acquainted with the rules of law that apply to the case and in the light of them you determine the facts. Remember, you take the law from the Court but when it comes to the facts we take the *finds* in respect thereto from you. You see the witnesses, observe their demeanor, note their story, their narrative, and it is for you to determine which witness speaks the truth, what weight will be given to the circumstances and what inferences you will draw from the circumstances that

may manifest themselves by your verdict. The Court has no power and no disposition to attempt to bind you to its opinion even when I express an opinion as to the facts and if I ever do express an opinion it is solely in the hope that in a difficult case [54] it might aid you to reason out to a correct conclusion.

However, remember, you take the law from the Court and you determine the facts for yourselves.

In this case the defendants were charged, five in number, with two offenses: First, the unlawful transportation of intoxicating liquor; and, second, with an unlawful conspiracy to accomplish that transportation. Two of these defendants have plead not guilty to both counts, if I remember right—

Mr. FAULKNER.—Interposing: Guilty, your Honor.

The COURT.—They plead guilty to both counts?

Mr. FAULKNER.—Yes.

The COURT.—And they are not now on trial. The other defendants have plead not guilty. You will remember this indictment is not evidence against the defendants. It is merely the written charge so that they and all of us may know what is being tried to-day. The other defendants on trial, Marino, Ferris and Finney have plead not guilty and that raised in their behalf the presumption of innocence commencing on the trial.

You and I know nothing about their innocence. Don't know whether they are innocent or guilty. We should not know anything about that because we are neutral, umpires, judges; you are judges

of the fact, I of the law. At the outset the defendants are presumed to be innocent and that presumption of innocence requires you shall acquit them unless after you have considered all other evidence in the case it is your judgment that the presumption of innocence is overcome to a degree which leaves you satisfied they are guilty as charged beyond any reasonable doubt.

The burden is on the Government to prove the guilt of the defendant beyond a reasonable doubt or you are bound to acquit them. But remember, the Government is not bound to prove guilt beyond all doubt as that is impossible. Nothing can be proven beyond all doubt [55] from the witness stand, so in order that ample law may be administered to society the law says it suffices to prove it beyond a reasonable doubt.

After you have reviewed all the evidence in the case or of the transactions that are a part and parcel of it if you have not a persistent judgment that to a very high degree of probability the defendants are guilty as charged, you have a reasonable doubt and you will give them the benefit of it and acquit them. On the other hand after a review of all the evidence if you have a persistent judgment to a very high degree of probability that the defendants are guilty as charged you have no reasonable doubt and you will convict them. The probabilities, however, must not be mere suspicions, not mere surmises, conjectures, or an appeal to the doctrine of chances but must rest fully upon the evidence of the case from the testimony of the wit-

nesses and the circumstances which have been introduced.

Another way the courts sometimes put it, not as clear in my judgment, is that unless guilt is manifest to you to a moral certainty and an abiding conviction there is a reasonable doubt and you will acquit. In other words, if you have not an abiding conviction which is nothing more or less than a persistent judgment to a moral certainty which is nothing more or less than a high degree of probability the defendants are guilty as charged you have a reasonable doubt.

It is not for the defendants to prove their innocence. They have a right to and did in this case stand silent and offered no evidence whatever in their defense other than the presumption of innocence. The law gives them that right and the law says further that it shall not be commented upon by the district attorney and another thing you will draw no inferences adverse to them by reason of the fact they exercised their right to remain silent and it still devolves upon the Government to prove them guilty beyond a reasonable doubt. [56]

It is not a question with you whether these defendants are innocent or guilty. However, the question always is are they proven guilty beyond a reasonable doubt. If you do not believe them proven guilty by the evidence beyond a reasonable doubt you must acquit them.

The credibility of witnesses is for you. There is not muc*y* dispute between the witnesses but in criminal cases the credibility of witnesses is always for

you to determine. You observe them, their demeanor, their manner of knowing what they are testifying about, their likel*y*hood to have an accurate memory and their honesty, in reporting it to you. The interest of witnesses when there is any manifest must always be taken into account. There is a presumption that witnesses speak the truth and yet in many cases you may see reason why you would not accord such a presumption to any witness and if you see reason for it, not mere arbitrary caprice, it is for you to say whether you believe them or not. The determination is always left to the jury in respect to the truthfulness and the credibility of witnesses. You determine the credibility of witnesses the same as you do in business and you take some pride in your knowledge of human nature, knowing when men are dealing fair with you and in the same way you determine it with reference to men in the business world you determine it with reference to witnesses upon the stand.

Now, Gentlemen of the Jury, the charge is, first: That the defendants engaged in unlawful transportation of intoxicating liquor. There is such a thing as lawful transportation of liquor but it is never legal unless those transporting it have a permit from the commissioner of Internal Revenue Department to do so. There is no evidence in this case that the defendant had a permit but you can, if you see fit, ascertain from the circumstances whether or not this was a lawful transportation. You may look at the character of the locality where

it was being transported. There can be no legal transportation of liquor for beverage purposes at any time. A permit is never issued to transport liquor for beverage purposes. You may look at the nature [57] of the liquor. On its face it appears to be foreign liquor, whiskey. The whiskey is branded "Scotch production," I think, and the gin is branded as Holland production, Dutch production.

There is a presumption whenever liquor is found in the possession of anyone that the possession is for unlawful purposes, namely for sale or otherwise unlawfully furnishing it to anyone so in so far as this liquor was found in the possession of those defendants who have plead guilty the presumption is that they had possession unlawfully and so they were likewise transporting it unlawfully.

If from all the circumstances in the case you arrive at a conclusion the liquor was being unlawfully transported then it is for you to say whether these defendants had any part in that act. That is a vital issue in this case. It is not necessary in the commission of any crime that the men on trial should have actually committed it with their own hands. One may commit a crime by his associate, his partner therein, or his agent, just the same as in civil life you may perform acts by your agent, your servant, your associate, or partners. Whatever one partner does in civil business in the furtherance of that business all partners are liable for. So in crime whenever one of the defendants aided and abetted by another's agents, servants or

partners, they are all just as guilty as those who commit the deed. If one partner engaged in a place of business to rob that place they are all equally guilty. So if you find there was an engagement and an association between all these defendants, those two who have plead guilty and the three who have not, to unlawfully transport this liquor then these defendants are as guilty of the charge as those who had heretofore plead guilty.

The next charge is conspiracy to unlawfully transport liquor. They conspired, engaged together, to commit some act forbidden by the law, some unlawful act and *though although* not all are found at the [58] immediate commission of the crime for engagement in it, if they had a prearrangement to that end all are equally guilty and guilty of the conspiracy. When it is charged, as here, to an unlawful end, conspiracy is often difficult to prove. Rarely will you find anyone to testify to you that he heard them agree to arrange to do something or to operate together in this criminal project. You rarely find it set out in writing. The law says it may be inferred from the circumstances of the case and it must be proven by circumstances or from evidence beyond a reasonable doubt before a jury can find the defendant guilty of conspiracy. The agreement, arrangement, need not have been expressly set out in words. It may be understood and inferred from the conduct of the parties associated together as shown by the evidence.

And now we come to the facts of this case. Well, in respect to that, the relationship of the parties, their acquaintance, their mutual acts leading to some end in so far as you find any in connection with the case.

Now, Gentlemen of the Jury, coming to the facts of this particular case and the evidence. You have heard it. It is very brief. The sheriff and deputy apparently, whether they heard the bottles jingle or not, had good reason to believe the two men who have plead guilty passing in a truck had liquor and they followed them down the road near a place called Monte Rio. After pursuing them for some distance they stopped them and they find they have a great deal of intoxicating liquor upon which were no appropriate Government stamps and they tell you what happened while they waited there. They say after about two minutes these men manifest some nervousness, desired to move aroung in the rear of the truck. The sheriff says the auto drove along with the other three defendants who are on trial in it. The deputy testified they stopped this auto with the three defendants and compelled them to get out into the road. They found one of the [59] defendants, Ferris, armed with a loaded revolver and they found lying in the front of the auto a machine gun, which passed for a machine gun in this state, fully loaded and ready for operation although there was a case in the auto with a ramrod and some cartridges in it.

There is very little, apparently, conversation as far as reported to you here. There is nothing to

disclose that these defendants now on trial and those that have plead guilty had any prior acquaintance. There is no oral testimony on that. There is nothing to disclose the fact that they manifest any signs of acquaintanceship there at the time when they were all together in the presence of the two officers. There is nothing to show any conversation between the defendants. Particularly the sheriff that testified when he was riding into town in the auto that they denied they had any acquaintance with these two men who had been found actually driving the truck in which the liquor was found. The deputy says that they did not say anything about that but as he and the deputy separated in going to town the deputy driving the truck and the sheriff in the other auto with these three men in the other auto that may be why the deputy tells you he heard nothing of that sort. The sheriff says he did, Mr. Finney was asked in the sheriff's office and Finney denied it there that he had any acquaintance with the two men taken with the truck.

But there are some circumstances which the Government points to as serving to show the association of these men together and the guilt of all of them. That is in the statements which the sheriff and the deputy say these men made in reference to the gun. They were guilty of violating the state law by the mere possession of that gun and guilty of a very serious offense under which they might receive a very heavy punishment, namely a fine not to exceed five thousand dollars

or imprisonment not to exceed three years or both. The mere possession of that sort of a gun is a serious offense in [60] this state. You can see those men are shown by the Government to have it for no innocent purpose but to explain the presence of the gun they were asked what they were doing with it by the sheriff and he says that Ferris, the defendant, told him "It is not for you officers, it is for high-jackers." Now, if you don't understand, you must have that term "High-Jacker" in mind, it is generally understood in the vernacular. The sheriff further testifies that when he asked Marino what he had it for, if he had it for fun, Marino said he had it for target shooting, to shoot quail with and he said it was *said,* his attitude when he made that answer was very serious.

The testimony further is if there is anything for you to discover as to the connection in the case that all these men except Wilson wore clothes, Wilson is the one who plead guilty, isn't he?

Mr. FAULKNER.—Wilson and Sanchez.

The COURT.—All except Wilson were dressed in black jeans, overalls. Wilson was on the truck. He was in some sort of whipcord trousers and another pair of those overalls was found in the truck. My recollection is the same were tainted with sand. Another piece of evidence is this rope which was found in the auto in which were these defendants and it is said to you by one of the witnesses that this rope discloses traces of green paint like the green paint that the truck appeared to be colored with. Then it was testified that rope could be used

in connection with autos. I don't know whether the theory of the Government is this rope was used on the axle of the automobile for pulling in boats. I don't know that. Perhaps it is. But anyhow you give it any consideration, if any, you believe it is entitled to. It is rather a heavy rope for ordinary towing of trucks or autos. However, that would be for you to say whether it was any part or parcel of this conspiracy or whether an incriminating circumstance or not.

The sheriff further testifies that he was coming into town with [61] the defendants and one of these defendants on trial, Ferris, wanted to know if the matter could not be fixed up. Now at that time the sheriff was intending, he says, to charge these men who were found in the auto with the unlawful possession of these firearms. I take it it is unlawful to carry a concealed weapon. Ferris had it and you may say he had the machine gun because it lay in the auto, it was right at the feet of Marino and Ferris, and he intended to charge them with that. Could it have been the defendants were endeavoring to dissuade the sheriff from charging them with that. That is a matter for you to determine. Were they guilty of the liquor as well as of the guns and were they speaking in reference to that as well as in reference to the guns. It is fair to say that in so far as that standing alone is concerned it is just as consistent with the fact that they wanted to be protected from that charge in reference to the gun as to the charge in reference to the liquor, more consistent perhaps. If that was

the only fact in the case that would not be an incriminating circumstance at all because there was enough in the gun charge to encourage them to fix it up with the sheriff and they used that language to disclose to him they did not mean the guns but to run through that liquor and as they had been taken there in the immediate presence of the liquor and whether they thought they were being charged with that is a matter you can consider for yourselves.

The sheriff further says Ferris told him they had mutual friends in that county and that he had understood the officers in that county were all right for them to go through there. Again that standing alone might relate as much to the guns as to the liquor unless there was some other way from wherever they had been using these guns for them to go home through some other county.

The Government has introduced some evidence about the coast nearby and that liquor could be landed there. These people were coming from that general direction. One of the officers so testified but it [62] is wholly immaterial where they did come from if it was unlawful liquor and being unlawfully transported and if there was a conspiracy to effectuate it.

It is in evidence also that these defendants, two of them in the auto, Ferris and Marino, gave false names. In that connection in furtherance of any illegal enterprise may be inferred but it would be as desirable, no doubt, if possible, to use false names to protect themselves from the terrors of

the law for them to use false names in connection with these unlawful guns as it would be in connection with unlawful liquor upon the thought of them being prosecuted.

As far as the defendants on trial are concerned the evidence is what is termed circumstantial evidence. They have produced no one who has seen them in possession of the liquor or giving directions for it to be transported or anything whatever except a series of circumstances which the Government contends is sufficient to warrant you finding them guilty beyond a reasonable doubt, and they ask you to do so. In circumstantial evidence the rule is this. If the circumstances are as consistent with the innocence of the defendants of this particular crime here to-day as it is with their guilt you are bound to acquit them because that serves to raise a reasonable doubt in their behalf. If the circumstances in the case aren't as consistent with the innocence of these men of the charge against them to-day as of their guilt it will be your duty to convict them. It will be for the state to say what shall be done with respect to the unawful possession of the guns wherein some charge has already been made against them. I think the evidence has disclosed that.

So, Gentlemen of the Jury, that is the case for you. Before you can find the defendants guilty it will be for you to determine, first, beyond a reasonable doubt that the liquor was being unlawfully transported, if you find it was. Second, whether or not these defendants on trial had any

prearrangement and understanding with the [63] defendants who were transporting the liquor and that it should be so transported, and if you find that proven beyond a reasonable doubt your verdict should be one of guilt. If you don't find those two issues proven beyond a reasonable doubt your verdict must be not guilty. When you retire to the jury-room you will select one of your number as foreman and proceed to a verdict. It takes twelve to agree to any verdict in this case. Any exceptions?

Mr. FAULKNER.—Your Honor, may I respectfully except to the Court's failure to give Instruction Number 10, and I think under the rule I must designate it further. In connection with the burden of proof that the liquor was illegally possessed—

The COURT.—(Interposing.) Oh yes, I told the jury the burden of proof all through this case is on the Government to prove the liquor was being unlawfully transported, and to prove these defendants on trial were conspiring with the others to transport it.

Mr. FAULKNER.—Your Honor gave an instruction in substance that that proof could be gained from circumstances, might I respectfully suggest to your Honor that the proof is obtained from the obtaining or nonobtaining of a permit and that proof is in the hands of the Government and the failure to offer that can't be offset by circumstances.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

The COURT.—You may retire.

(Whereupon the jury retired to deliberate upon their verdict and subsequently returned into court with a verdict of guilty against each defendant on both counts.) [64]

That the instruction proposed by defendants, and discussed subsequent to the charge of the Court and the failure to give which was excepted to was in words as follows:

> "In determining the guilt or innocence of these defendants upon the charge of conspiracy alleged in the indictment, I charge you that the burden was upon the government in this case to prove to a moral certainty and beyond a reasonable doubt that the contents of the automobile truck referred to in the evidence in this case was at said time being illegally transported.

That upon the rendition of the verdict the defendants herein moved for a new trial, which said motion for a new trial was in the words and figures as follows:

"(Title of court and cause.)

Now comes the above named defendants, Joe Ferris, Frank Finney and Freddie Marino, and move the Court to set aside the verdict herein and grant a new trial, and as reasons therefor show to the Court the following:

I.

The verdict is contrary to the law of the case.

II.

The verdict is not supported by the evidence in the case.

III.

The Court, upon the trial of the case, admitted incompetent evidence offered by the United States.

IV.

That the Court improperly instructed the jury to the substantial prejudice of said defendants.

V.

That the Court improperly refused, to the substantial prejudice of said defendants, to give correct instructions on the law tendered by said defendants.

VI.

The Court erred in refusing to direct a verdict of Not Guilty at the close of all evidence by the United States."

(Date and signature of counsel for defendants.)

[65]

That said motion for a new trial was by the Court denied to which ruling defendants excepted.

Thereupon the defendants Ferris, Finney and Marino were called to the bar and the Court pronounced the following judgment and sentence: That each defendant be confined at McNeils Island penitentiary of the United States for a period of fifteen months at hard labor and that the defendants above named and other defendants not on trial be fined jointly the sum of Three thousand dollars.

The above bill of exceptions contains all of the evidence oral and documentary, and all of the proceedings relating to the trial of these defendants and all matters considered by court and jury in the trial other than the exhibits which are incapable of being copied herein or otherwise made a part hereof.

Dated: March 27, 1929.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Appealing Defendants. [66]

[Title of Court and Cause.]

STIPULATION RE EXHIBITS.

It is hereby Stipulated by and between the attorneys for the United States of America and the attorneys for the defendants herein that the exhibits introduced in evidence at the trial of the above-entitled cause and now in the custody of the Clerk shall be deemed included as a part of the foregoing bill of exceptions with the same effect in all respects as if incorporated in the said bill of exceptions.

It is further stipulated that all exhibits introduced at the trial of the above-entitled cause may be marked by the Clerk of the above-entitled court and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: April 23d, 1929.

GEO. J. HATFIELD,
United States Attorney,
ALBERT E. SHEETS,
Assistant United States Attorney,
JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants. [67]

[Title of Court and Cause.]

STIPULATION SETTLING BILL OF EXCEPTIONS.

It is hereby stipulated by and between the respective parties hereto that the foregoing bill of exceptions on behalf of the defendants Joe Ferris, Freddie Marino and Frank Finney, and each of them upon appeal herein to the Circuit Court of Appeals in and for the Ninth Circuit has been duly presented within the time allowed by law and the rules and orders of this Court duly and regularly made in this behalf and the same is in proper form and conforms to the truth and that it may be settled, allowed and signed and authenticated by the Court as the true bill of exceptions herein, on behalf of said defendants and each of them and that it may be made a part of the record in this cause.

Dated: April 23d, 1929.

GEO. J. HATFIELD,
United States Attorney,
ALBERT E. SHEETS,
Assistant United States Attorney,
JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants. [68]

[Title of Court and Cause.]

ORDER SETTLING, ALLOWING, SIGNING AND AUTHENTICATING THE BILL OF EXCEPTIONS AND MAKING SAME PART OF THE RECORD.

The foregoing bill of exceptions duly proposed by said defendants Joe Ferris, Freddie Marino and Frank Finney, and each of them, and duly agreed upon by the respective parties thereto, having been duly presented to the Court within the time allowed by law and by the rules and orders of this Court, duly and regularly made in their behalf, is hereby settled, allowed, signed and authenticated, as in the proper form and as conforming to the truth and is the true bill of exceptions herein, and is hereby made a part of the record in this case.

It is further ORDERED that the exhibits introduced in evidence in the trial of the above-entitled cause and now in the custody of the above-entitled court, shall be deemed to be included as a part of

the foregoing bill of exceptions, with the same effect and in all respects as if incorporated in said bill of exceptions, provided, printing not waived unless by order of the C. C. A.

It is further ORDERED, that said exhibits be marked by the Clerk of the above-entitled court in a manner to identify them and thereupon filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: April 30, 1929.

BOURQUIN,
United States District Judge.

[Endorsed]: Filed May 3, 1929. [69]

[Title of Court and Cause.]

NOTICE OF PRESENTATION OF BILL OF EXCEPTIONS.

To the United States Attorney, and to the Plaintiff Above Named:

Take notice, you and each of you that the bill of exceptions in the above-entitled matter stipulated by you to be correct, will be presented forthwith to the Honorable George M. Bourquin, District Judge, at Butte, Montana.

Dated: April ——, 1929.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Appealing Defendants.

Due service and receipt of copy of the above notice is hereby admitted this 27th day of April, 1929.

GEO. J. HATFIELD,
U. S. Attorney,
ALBERT E. SHEETS,
Assistant U. S. Attorney.

[Endorsed]: Filed Apr. 27, 1929. [70]

[Title of Court and Cause.]

STIPULATION CONSOLIDATING APPEALS, ETC.

IT IS HEREBY STIPULATED by and between plaintiff and the appealing defendants in the above-entitled action that the appeals of the respective filing defendants from the judgments, and each of them, of the above-entitled court, made and entered in the above-entitled cause against them, and each of them, on March 25, 1929, may be presented to the United States Circuit Court of Appeals, in and for the Ninth Circuit, as one appeal, and be presented on one record, and prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors and one bill of exceptions.

Dated, March 27, 1929.

GEO. J. HATFIELD,
ALBERT E. SHEETS,
Attorneys for Plaintiff.
JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants.

[Endorsed]: Filed Mar. 27, 1929. [71]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING APRIL 17, 1929, TO PREPARE, SERVE AND FILE AMENDMENTS TO PROPOSED BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff and appealing defendants herein, that plaintiff may have to and including April 17th, 1929, within which to prepare, serve and file their amendments to the proposed bill of exceptions on file herein.

IT IS FURTHER STIPULATED that the above-entitled court may enter an order pursuant to this stipulation dated as of April 6th, 1929.

Dated April 8th, 1929.

GEO. J. HATFIELD,
Attorney for Plaintiff.
JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants.

Pursuant to the foregoing stipulation, it is SO ORDERED as of April 6th, 1929.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1929. [72]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING APRIL 27, 1929, TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between plaintiff and appealing defendants herein, that said defendants may have to and including April 27th, 1929, within which to prepare, serve, file and present their engrossed bill of exceptions in the above-entitled cause.

Dated: April 8th, 1929.

GEO. J. HATFIELD,
Attorney for Plaintiff.
JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
Attorneys for Defendants.

Pursuant to the foregoing stipulation, it is SO ORDERED.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1929. [73]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING APRIL 27, 1929, TO PROPOSE AMENDMENTS TO BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the plaintiff may have to and including the 27th day of April, 1929, within which to propose amendments to defendants' proposed bill of exceptions in the above-entitled action, and have the same settled.

Dated: April 17, 1929.

HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
Attorneys for Defendants.

Upon the foregoing stipulation, it is so ORDERED.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Apr. 19, 1929. [74]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING MAY 7, 1929, TO PREPARE AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the defendants may have to and

including the 7th day of May, 1929, within which to prepare and file their engrossed bill of exceptions in the above-entitled action, and have the same settled.

Dated April 17, 1929.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Plaintiff.
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
Attorneys for Defendants.

Upon the foregoing stipulation, it is SO ORDERED.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Apr. 19, 1929. [75]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare transcript on appeal to include the following pleadings, motions, proceedings and orders in the above-entitled cause:

1. Indictment.
2. Record of the trial.
3. Verdict of the jury.
4. Motion for new trial of defendants Ferris, Finney and Marino.

5. Sentences and judgment.
6. Notice of appeal.
7. Petition for appeal, and supersedeas and order allowing same.
8. Assignment of errors.
9. Bill of exceptions.
10. Order settling and allowing bill of exceptions.
11. Notice of presentation of bill of exceptions.
12. The stipulations and orders extending time to settle bill of exceptions and extending term, and all stipulations relating to appeal and exhibits.
13. Citation on appeal.
14. This praecipe.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,

Attorneys for Defendants Ferris, Finney and Marino.

[Endorsed]: Filed May 10, 1929. [76]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing 76 pages, numbered from 1 to 76, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States of America vs. Joe Ferris et al., No. 3679—Criminal, as the same now remain on file and of record in this office; said transcript having been prepared pur-

suant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of thirty-one and 70/100 ($31.70), and that the same has been paid to me by the attorneys for the appellants herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 22d day of May, A. D. 1929.

[Seal] WALTER B. MALING,
Clerk,
F. M. Lampert,
Deputy Clerk. [77]

CITATION ON APPEAL.

UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circiut Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, or record in the Clerk's office of the United States District Court for the Northern District of California, wherein Joe Ferris and Freddie Marino and Frank Finney,

are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, United States District Judge for the Northern District of California, this 27th day of March, A. D. 1929.

BOURQUIN,
United States District Judge.

Service of the within citation and receipt of copy thereof is hereby admitted this 27th day of March, 1929.

ALBERT E. SHEETS,
D.
Asst. United States Attorney.

[Endorsed]: Filed Mar. 27, 1929. [78]

[Endorsed]: No. 5827. United States Circuit Court of Appeals for the Ninth Circuit. Joe Ferris, Freddie Marino and Frank Finney, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed May 23, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.